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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,546	01/07/2002	Kamran Loghman-Adham	07308.120	4853

7590 09/22/2003

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Suite 240  
6550 Rock Spring Drive  
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EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 09/22/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/036,546

Applicant(s)

LOGHMAN-ADHAM, KAMRAN

Examiner

Alton N. Pryor

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 26 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 12-20 is/are allowed.
- 6) ☐ Claim(s) 1-7, 10, 11 and 21-33 is/are rejected.
- 7) ☐ Claim(s) 8, 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Response to Amendment***

**I. Rejection of claims 8,9 under 35 USC 112 will not be maintained in light of amendment filed 6/26/03.** Applicant has amended claim 1 from which claims 8 and 9 depend to include "incapacitating".

**II. Rejection of claims 27-30 under 35 USC 102(b) as being anticipated by Antoshkiw on record will be maintained for reasons on record as well as for reasons below.**

Claims 27-30 recite a solvent not a solvent system or mixture of solvents. Antoshkiw teaches a claim component: "propylene glycol dicaprylate-dicaprate". Applicant discloses that "propylene glycol dicaprylate-dicaprate" is a solvent for the instant invention. Examiner takes the view that Antoshkiw teaches said glycol whether it functions a solvent or something other than a solvent is not significant. Applicant argues that said glycol has different MW's and vapor pressures depending on the diester. Examiner argues that Antoshkiw refers to said glycol as a single compound. The compound meets the MW limitation of at least 100 and would inherently meet the vapor pressure limitation. Claims 27-30 are not to any specific solvents, and claims 27-30 permits the inclusion of ingredients other than a non-toxic solvent having a MW of at least 100.

**III. Rejection of claims 1-7,10,11,21-26,31-33 will be maintained for reasons on record and reasons as follows.**

Applicant argues that the prior art references cited are in a totally different field of use and are all directed to coloring and stabilizing agents for food products. Examiner argues that in claims to compositions (solvent systems) and the components of the solvent systems, a statement to intended use has no patentable significance.

Applicant argues there exist no motivation to combine the prior art references of record. However, Applicant mentions that cited references of record are "all directed to coloring and stabilizing agents for food products". Examiner argues that the fact the intended use for all of the cited references is the same is ample reasons for one having ordinary skill in the art to combine them. The combination of the references (JP '832 and Antoshkiw) leads to the two component system comprising propylene glycol dicaprylate-dicaprate and glycerol tris(2-ethylhexanoate). Furthermore, the addition of Todd to the reference combination would result in the two component system comprising oleoresin of paprika as a third component. In absence of unexpected data the amount of ingredients is not patentable.

***Allowable Subject Matter***

Claims 8 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach or suggest a solvent system comprising an inflammatory agent. Claims 12-20 does not teach or suggest the instant formulation comprising a propellant

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

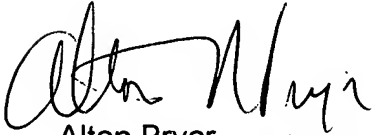
***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 703 308-4691. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 703-308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Art Unit: 1616

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1235.

A handwritten signature in black ink, appearing to read "Alton N. Pryor".

Alton Pryor  
Primary Examiner  
AU 1616

**ALTON N. PRYOR**  
**PRIMARY EXAMINER**